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Supreme Court, U.S.
FILED

No. 991446

FEB 29 2000

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ERNEST MCCLELLAN JR.
AKA. VEARNEST MCCLELLAN JR. - PETITIONER

V.

THE NORTHERN TRUST COMPANY -RESPONDENT

On Petition For Writ Of Certiorari
To The Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

ERNEST MCCLELLAN JR.
aka. VEARNEST MCCLELLAN JR.
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PRO SE'

25pp

QUESTION(S) PRESENTED

Petitioner Ernest McClellan Jr. received a $1,500,000 in 1966 as result of a judgement involving a personal injury claim. Funds are being held in the Northern Trust Co. Trustee (The Northern Trust Company) never notified the Beneficiary/ Petitioner Ernest McClellan Jr. of the existence of this trust account when he reached the age of majority (21). The Petitioner along his Accountant retrieved the file number (2196L) that was posted and recorded in the 1966 (M) for Minors Law Ledger. It has the information regard the petitioner trust account. This file number will provide all information regarding the Petitioner trust account. The docket book or file numbers has not presented in court to release the petitioner asset to him. The respondent (The Northern Trust Co.) claims and filed to dismiss this case on the grounds of statutes of limitations, time barr. The petitioner forfeits his right to seek legal intervention.

Whether we can settle this case once and for all. By presenting the file number obtained my the Petitioner and his Accountant from the Law Ledgers, in the Supreme Court of United States with all parties present to view and confirm the existence and pertinent information regarding the Petitioner Trust Account assets.

1. Purge file no. 2196L for (M) Minor from the 1966 Law files, archives, and/ or microfilm

2. Petitioner pay expenses for all parties to be present

Whether the Northern Trust Co. and The Courts systems are allowed to barr the Beneficiary / Petitioner Ernest McClellan Jr. from collecting his trust asset due to a misimplied statute of limitation that (should never have been applied) to a Beneficiary according to the "Laws of Trust"

Whether the Respondent – The Northern Trust Co has any obligation at this point to informed the Petitioner of what they fail to do when the Petitioner reached the age of majority (21) that is: Release to the Petitioner / Ernest McClellan Jr. his trust assets

PARTIES TO PROCEEDING

All parties appear in the caption of the case on the cover page. There are no parent or publicly held company owning 10% or more of the company's stock.

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Uniform Trustees Accounting Act Section 18- Enforcement

IN RE UNION TRUST CO. supra, the Court of Appeals of N.Y.
219 N. Y. 514 at page 521, 114, N. E. 1057, 1059

Van Cott v. Prentice
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Bogert ss583, 592, 592

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229 Iowa 408, 294 N. W. 597 (1940)

Hasen v. Bear Film Co.
28 Cal.2d 154, 168 P.2d 946 (1946)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The August 10, 1999 opinion of the Appellate Court, the judgement of which is sought in this petition to be reviewed, {is an unpublished decision, No. 98-4163, decided on August 10, 1999} and is reprinted in the separate Appendix to the petition at pp. A.

The prior opinion of the Circuit Court of Cook County, IL. County Dept., Law Division, entered October 7, 1998, {is an unpublished decision, No. 98L 2461, decided on October 7, 1998}, and is reprinted in the separate Appendix to this petition at pp. B.

STATEMENT OF JURISDICTION

The judgement of the Appellate Court was entered on August 10,1999. A petition for a rehearing was filed on August 27,1999,this Petition of Rehearing was denied on September 03, 1999. Petitioner file an Affidavit of Intent to Petition for leave to Appeal on September 22, 1999. (Pursuant to this Court's rule 315), The Petition was file on October 7, 1999, which was within 35 days of the Appellate Court's decision affirming the judgement of the Circuit Court. The jurisdiction of this court is invoked pursuant to 735 ILCS 5/2 – 619 (a)(5).
The judgement of the Circuit Court was entered on October 7, 1998. The jurisdiction of this court is invoked pursuant to 735 ILCS 5/2-619 (a)(5). Time barred, by statue of limitation. A petition to replead was denied. A timely filed Petition for Leave to Appeal to the Supreme Court of Illinois was denied on December 1, 1999. No petition for rehearing was filed.

CONSTITUTIONAL PROVISONS, TREATIES, STATUES, RULES, AND REGUALTIONS INVOLVED PROVISIONS INVOLVED

Relevant Statue – Where the trustee conceals the existence of the trust, Hansen v. Bear Film Co., 28 Cal.2d 154, 168 P.2d 946 (1946), or conceals the breach, the statute of limitation does not run against the beneficiary.

Relevant Provisions UNDER THE UNIFORM ACCOUNTING ACT SECTION 18- ENFORCEMENT –which gives the Beneficiary the rights to apply to the court of competent jurisdiction for an order requiring the Trustees (who hold asset in a fiduciary capacity) to perform the duties imposed upon the Trustees by this act.

Relevant Statue- Bogert ss 583, 592,597 Under the Law of Trust . After a Trustee has accept the trust and qualified by filing an oath, giving bond, or taking any other steps required by law or the trust instrument, HE HAS A DUTY TO EXAMINE THE TRUST TERMS.

Relevant Statue - The Trustee must uphold their duty according to WYLIE V. BUSHNELL 277 ILL. 484, 115 N. E. 618 (1917) to furnish Beneficiary pertinent information about the trust and about the identity, condition, management and productivity of the trust property documents and account books.

STATEMENT OF THE CASE

This case involves the misappropriation and defrauding of an awarded judgement granted in behalf of the Petitioner(Beneficiary) Ernest McClellan a.k.a. Vearnest McClellan Jr. by the Respondent – The Northern Trust Co (Bank). On October 16, 1966, Petitioner (Ernest McClellan Jr.) was awarded $1,500,000 at the age of 8 years old. A judgment resulting from a personal injury case, involving a minor. Mr. Ernest McClellan Jr. was hit by a Home Orange Juice Company truck, being driven by Mr. Frank Stack. Insurance Carrier was Otto Verel._ The $1,500,000 awarded Ernest McClellan Jr. then a minor was place in a Trust Account at the Northern Trust Company until the then minor reaches the age of majority (21).

VISIT TO THE NORTHERN TRUST TO COLLECT THE TRUST ACCOUNT ASSETS

Plaintiff accompanied with CPA Accountant (Victoria McClellan) went to Northern Trust Bank , located downtown Chicago to collect his trust account with p oper identification on August 17, 1992 at about 12:00 p.m. Representatives of the Northern Trust (a Banker and Accountant Eva) told Plaintiff on August 17, 1992 that his trust account was found on their written instrument (sletters) their in the back room of the trust division. The Banker and the Accountant Eva looked in awe at the plaintiff as they exclaimed " we thought that you were deceased". Northern Trust Representative Accountant Eva and the Banker, inform the Plaintiff and his Accountant , that two Bankers had removed his first name off of his trust account and applied their first onto the petitioner last name. Defendant's (Northern Trust Company) committed a breach of trust. { In Re Union Trust Co., supra, the Court of Appeals of New York stated (219 N.Y. 514 at page 521, 114, N.E. 1057, 1059) } Any "such matters involving a trust fund violates the long – established rule that a trustee should invest trust funds in the name of the trustee as such, and the rule that trust funds should, at all times, be kept, so far as reasonably possible, in the name of the trust , so that they can be identified , distinguished, and followed by all person interested therein" Since petitioners' trust account has two (2) Bankers , undisclosed bank employees

names attached to his trust account, the Bank representatives Eva and the Banker of the trust Dept., informed Mr. McClellan and his Accountant (Victoria McClellan) that Mr. McClellan drivers license would not be sufficient identification to collect his trust account. The Banker and Accountant Eva, requested a passport book from the Beneficiary, which was given to his parents (Vearnest McClellan Sr. & Emma Jean McClellan) when the trust account was first established. It contains the account number for the Plaintiff's Trust Account. The banker and Eva sent Mr. McClellan and his Accountant to speak to The Honorable Judge Novoselsky who was the Presiding Judge in 1803 at the Richard J. Daley Center in the Probate Division. The Honorable Judge Novoselsky sent Petitioner Mr. McClellan and his Accountant (Victoria) to the law Department 1201 at the Richard J. Daley Center . The Petitioner Ernest McClellan Jr. went to the Probate Dept. and found the judgement regarding the Driver of the Home Orange Co. settlement. This probate file no. 67p 5465 was given to the petitioner by the Driver (Frank Stack) in 1967. Plaintiff had the documentation for this file prior to coming to the Daley Center. Mrs. Pearl Williams a Custodian at the Law Dept. directed and assisted Mr. McClellan and his Accountant in locating the posting of the petitioners trust account. The ledger confirmed and indicate the petitioner/ beneficiary monetary judgment that was awarded him in 1966, from the Home Orange Juice Company's Insurance carrier – Otto Verel .The judgement awarded the petitioner Mr. McClellan $1,500,000 on 10/16/66. Court case and File No. # 2196. The 66 log book was for Minors.

66l M-minor log book for the plaintiff posted as shown below.....

66L McClellan Ernest Jr-Otto Verel-2196-10/16/66-1500000-66L

When Mr. McClellan attempted to order the file, he was told by the Law Dept. Custodian name Chuck, that the file had just been destroyed. Which the petitioner found out was false after legal proceeding began. Mr. McClellan was given a destruction of record publication.

THE INVESTINGATION CONDUCTED BY THE PETITIONER & BENEFICIARY ERNEST MCCLELLAN JR.

The respondents (The Northern Trust Co.) had acknowledged that the Plaintiff trust account was there in their custody. Their request seemed fairly simple, to get the account number to present to the Northern Trust Co. (Bank) for the release of the petitioner trust account assets. Plaintiff had no knowledge or reason not to believe this was not a customary request. Mr. McClellan felt the Respondents were trying to help him, when the Bank employee (Eva) directed the Petitioner and his Accountant to Judge Novoselsky of the Probate Division to obtain assistance in obtaining the account number for the petitioner trust account.

Upon locating the posting of the ledger regarding the Petitioner trust account which was located in the (M) for Minors 1966 Log book of the Law Division . The petitioner could not obtain the file for the file number , all 1966 records were recently destroyed.

The petitioner's mother Emma Jean McClellan began a through search of her paper but she said that his sister had come and taken all of his papers concerning his money, which they denied. The petitioner began a search to find lawyers, police reports, hospital records, Judges, Frank Stack to locate something, anyone who could shed light on the document of the petitioner 's trust account passport number.

The petitioner made numerous attempts, contacting the defendants(The Northern Trust Company) to inform them about his being unsuccessful in locating the account number for the petitioner trust account. Petitioner called Mr. Fox (Northern Trust Co.) CEO, as well as Mr. William A. Osborn who is now the new Chairman of the Board and Chief Executive Officer, to explain the problems he was having and if he would issue a duplicate passport (Bankbook) for his Trust Account Asset, only to be mail a letter on November 1, 1994 from Nancy Lyon, stating they found no evidence of any account in Ernest McClellan name. Petitioner Mr. McClellan felt there must be some mistake and asked Nancy Lyon to recheck their records. He'd given Nancy his mother social security number and name, since his mother could very well be listed as the guardian, whereby the petitioner was a minor at the time the trust account was establish in October of 1966.

Meanwhile the Petitioner submitted consumer inquiry through the ILLINOIS OFFICE OF THE COMMISSIONER OF BANK AND TRUST COMPANIES, concerning a passbook for the petitioner trust account . On December 15, 1995 the inquiry was forwarded to the Defendants (The Northern Trust Co. and their response were the same . No accounts exit, unless the Plaintiff can produce an account number for the petitioner account.

Plaintiff had sufficient knowledge on December 29, 1994 after the Respondent filed their responses to the ILLINOIS OFFICE OF THE COMMISSIONER OF BANK AND TRUST COMPANIES. The Respondent (The Northern Trust) has refused to give the petitioner his trust assets and has hid the existence of it. They have no intention of giving the Petitioner – Beneficiary his trust account assets to him. On December 29, 1994 – Mr. William C. Matthews, Second Vice President sent the petitioner a letter to that effect

On January 06,1995 – The Petitioner gave a statement to the Respondent (The Northern Trust Company), stating the Petitioner intent to pursue legal action against the Respondent

Therefore , the petitioner had sufficient knowledge of the injuries, which were being inflicted upon him as a result of the respondent breach of trust, by concealing the existence of the petitioner trust account assets on December 29, 1994. On January 06, 1995 petitioner gave notice of intent to pursue legal action against the defendant. Mr. McClellan began filing suit against the Respondent on February 27, 1998. If the 5 year statue of limitation applied against the petitioner – beneficiary (Mr. McClellan), the petitioner is well within the scope of the time limit; Thereby, it would be fair to say this case is not time barred.

LEGAL INTERVENTION
PETITION FOR A WRIT

On February 27, 1998 petitioner Ernest McClellan Jr. brought a motion for a writ to order the respondent (The Northern Trust) to surrender to the petitioner Ernest McClellan Jr. a.k.a. Vearnest McClellan Jr. his trust account pursuant to THE UNIFORM TRUSTEES ACCOUNTING ACT SECTION 18 ENFORCEMENT.

On May 18, Both parties appear in court before the Honorable Judge Gardner. The petitioner was not allow to speak. The respondent attorney Pamela Peterson said they want to have this case dismiss on the grounds of statue of limitation. The judge said that he didn't have a copy of our file so the petitioner gave his a copy. The respondent attorney Ms. Pamela Peters asked for more time so both parties were schedule to make our next court appearance July 10, 1998. 6-15-98 petitioner Amended to his complaint at law.

On July 10, 1998, Both parties appear, the Honorable Judge Gardner instructed both parties to reply and respond to each other complaint, before the next schedule court date which is August 11, 1998. Attorney Pamela Peters did not show up in court in her place was another attorney Mr. Michael Bruton. He said that he and four attorney we be representing the Northern Trust Co. The petitioner asked to tell his side of the story but the Judge didn't allow him the petitioner to speak. The respondent pleaded his case and the Judge said he would rule in his favor when both parties are adjoined on August 11, 1998. The petitioner felt that was not fair and tried to speak but the judge cut him off and told the petitioner if he make trouble he'll make sure his case will be tied up in court for years, so it best if he be quiet.

On July 16, 1998 – Petitioner Ernest McClellan Jr. filed for a SO J – Substitution of Judge.

On July 22, 1998 – Respondent file to dismiss Petitioner motion to dismiss.

On July 23, 1998 – Petitioner motion for a substitution of Judge is denied. The Honorable Judge Gardner recuses himself. The respondent Attorney is upset. The Honorable Judge Neville will be the presiding Judge in place of Judge Gardner. In the mean time both parties' replies and respond to each other complaint.

On August 1, 1998- Petitioner receives a notice of a calendar call for Honorable Judge Neville. Both parties are schedule to meet with him in court on August 7, 1998.

On August 7, 1998 – The Honorable Judge Neville hear both sides. He instructs the respondent Attorney Mr. Michael Burton to question Max E. White the allege banker , Attorney Mr. Leon Gillins, and Mr. Edward Byron Smith to confirm the conversations the Petitioner had with them. Court is adjoined until August 31, 1998.

On August 31, 1998 – Court is adjoin and the attorney for the respondent summited statue report in compliance with the order, However the report was false and he summit not proof that he even spoke to several of the persons he was suppose to have spoken with. He claimed in his report that the Attorney Leon Gillin never spoke to us and that Charles Owens was never his partner in 1966. He said the petitioner never spoke with Mr. Edward Byron Smith, and Max E. White is not the Banker at the bank, he summit a sign affidavit by Max E. White . That was the only proof he brought. The judge asked if we had any other proof, the petitioner said yes, we gave him the file number we obtain from the law ledgers. He called for a recess while the bailiff go and pull the file no. 2196 from the archive, when she turned, she winked at the petitioner. The Honorable Judge Gardner adjoined all parties and began the session. The Judge asked us if we wanted to respond to the statue report, reported by Mr. Michael Burton. The petitioner responded yes. The Honorable Judge Neville got up from the bench to look at the information the Bailiff retrieve for the Judge. The Honorable Judge Neville never returned, a clerk official came out and informed everyone that the Judge will not be returning and that everyone is to leave the court room. The clerk said the Petitioner can respond to the Statue Report, the Judge will not coming out. The Attorney for the respondent was very agitated by this. The petitioner existed the courtroom after it was apparent the Judge really wasn't coming back out. The Clerk said the Judge court was dismiss until October 07, 1998. Petitioner responded to the Statue Report on Sept. 15, 1998.

On October 06, 1998- Petitioner Ernest McClellan Jr. received a call from the Judges Clerk, he was calling us to tell us that the Honorable Judge Neville does not want us to come to court, that he would be sending the order in via mail. Petitioner requested to hear it from the Judge. Since it was after 11:00 p.m. when the clerk called. The petitioner felt he may have been trying to get him to miss his morning court appearance. He refuse to listen to the clerk.

On October, 07, 1998- The petition arrived for court only to be given an order of a summary judgement entered/ granted for the respondent (The Northern Trust Co.) Motion to replead Denied. Petitioner was given 30 day to file an appeal with the Appellate Court of Illinois.

On October 29, 1998- Petitioner filed its appeal to reverse the order of a lower court decision. Request for oral argument was denied. Both parties began the pleading process. Reply and Respond.

On August 10, 1999- Petitioner received the order of the Appellate court affirming the judgement of the circuit court. The Appellate Court taken into consideration, the Probate case File No. 67P 5465. Which was a monetary judgement for the Petitioner in 1967. However, it would have been feasible if the Appellate Court had taken the liberty of purging the Law Case from the (M) Minor –Law Case File No. 2196L to be present for viewing by all parties involved in this case. To establish if there were two judgements awarding the Petitioner monetary damages. Thereby, ending / bringing this suit to a close. Petitioner appeals to the Appellate court for a rehearing. The rehearing was denied on September 03, 1999.

The Petitioner filed a timely petition to the Supreme Court of Illinois. The petition Leave to Appeal , Appellate Court, First District was denied on December 1, 1999. The Petitioner Ernest McClellan Jr. did file for a rehearing. The petitioner has 90 days and or February 28, 1999 to submit its petition for review to the Supreme Court of the United States.

The petitioner Ernest McClellan Jr. a.k.a. Vearnest McClellan know that his trust account asset are at The Northern Trust Company (Bank) it has been since 1966. The respondent has request the petitioners passbook, baring the account number to his trust account. There should be something the bank would be willing to compromise on. Van Cott v. Prentice 104 N.Y. 45, 10 N. E. states it is immaterial that the Beneficiary was ignorant to the trust for his benefit. Petitioner (Mr. Ernest McClellan Jr.) trust account are documented and bound by trust instrument . The instrument often consists of two(2) or more papers, as where the conveyance to the trustee is absolute and by a separate instrument the trustee acknowledges the trust. If the respondent does not have any records. Having the file number to view and having everyone present in court is surely a way for the respondent to find out that the petitioners trust exist. Bogert ss 583, 592, 597 – states the after the trustee has accepted the trust and qualified by filing an oath, giving bond , or taking any other steps required by law or the trust instrument, he has a duty to examine the trust terms. The Northern

Trust Co. as well as the Petitioner Ernest McClellan has a the right to know whereabouts of his trust account asset. Wylie v. Bushnell 277 ILL . 484, 115 N.E. 618 (1917) states the Trustee must uphold their duty to furnish Petitioner (Ernest McClellan Jr.) other pertinent information about the trust and about the identity, condition, management and productivity of the trust property, documents and account books.

The Petitioner (Mr. Ernest McClellan Jr.) would like for this case to be settled once in for all . By the Supreme Court of the United States having all persons involved subpoena to the State of Washington at the expense of the Petitioner. Have the file number 2196L for (M) minors File purged from the 1966L Law files, archives, and/or microfilm. The Petitioner asked that the Supreme Court review the the order of the Appellate Count, to see if the statue were misapplied and accept this case and grant the petitioner a petition for a writ of certiorari.

The Northern Trust should tell the petitioner something regarding his trust assets. Do they have any obligations at this point to informed the petitioner of what they fail to do when Mr. McClellan reached the age of 21?

STATUE O F LIMITATION DOES IT APPLY

The United States Supreme Court In Hansen v. Bear film Co., 28 Cal.2d 154, 168 P.2d 946 (1946), made plain that: where the trustee conceals the existence of the trust , or conceals the breach, the statue of limitation does not run against the beneficiary (Higbee v. Walsh 229 Iowa 408, 294 N. W. 597 (1940), Knapp v. Knapp 15 Cal.2d 237, 100 P.2d 759 (1940). The respondent (The Northern Trust Co.) has consistently breach their fiduciary duties as well as conceal the exist of the petitioners trust account assets. Therefore, a statue of limitation does not bind/ or applies to the petitioners – beneficiary (Mr. McClellan).

REASONS FOR GRANTING THE PETITION

Petitioner , Ernest McClellan Jr. asserts that the Appellate Courts written order indicates that it failed to comprehend his analysis of the issues presented for review. The Appellate Court's order does not thoroughly address the merits of the case; the Appellate Court fail to properly interpret exiting laws and as a result comes to an incorrect conclusion. In light of the Appellate Courts mistaken treatment of the issues before it, the magnitude of the case and its effect on Constitutional Rights, Trust Laws and Banks who hold trust accounts in a fiduciary capacity for the sole benefit of the beneficiaries an their duties and obligations to the Beneficiaries, it is absolutely essential for this Court , in the exercise of its supervisory powers, to accept this case on review . The Supreme Court of the United States would have the opportunity to direct lower court to apply the Trust Laws consistently as to what constitutes a statue of limitation; those which are specifically relating to the Beneficiary and imposed upon Banks who except funds that are to be held in their fiduciary capacity, for the sole benefit of the Beneficiary.

Petitioner, Ernest McClellan Jr. assets are in a trust fund, being held by the Northern Trust Bank (Co.). The Northern Trust Company has refused to release these assets to the Petitioner – Beneficiary Mr. McClellan on the ground of statue of limitation, because the Beneficiary did not seek legal representation at a specific point and time to help him force the defendant (The Northern Trust Co.) into releasing his trust account to the Beneficiary (Mr. McClellan). The Beneficiary (Mr. McClellan) forfeits his rights to his trust assets being held in a fiduciary capacity at the Northern Trust Bank. According to the Law of Trust, the Statues of limitation do not run against a Beneficiary.

If this type of misrepresentation is allow to exit/or permitted. Beneficiaries everywhere will be subjected to the actions of the Courts decision and / or response to the Northern Trust Actions. The Plaintiff and the Beneficiaries of the present and future need you to intervene now!

Mr. McClellan submits that this case has importance well beyond it own unjust results, and respectfully prays that the Supreme Court grant the petitioner Mr. McClellan's a petition for a writ of certiorari.

SECOND DIVISION
August 10, 1999

No. 1 – 98 – 4163

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ERNEST MCCLELLAN , JR., a/k/a VEARNEST MCCLELLAN, JR., Plaintiff – Appellant,	) Appeal from the) Circuit Court of) Cook County.
v.	) No. 98 L 2461
THE NORTHERN TRUST CO., Defendant – Appellee.	) Honorable) Richard E. Neville,) Judge Presiding.

ORDER

Plaintiff Earnest McClellan, Jr., appeals pro se from an order of the circuit court of Cook County dismissing his first amended complaint against defendant, The Northern Trust Company, pursuant to section 2 – 619 (a) (5) of the Code of Civil Procedure (Code). 735 ILCS 5/2-619 (a) (5) (West 1996). Plaintiff contends on appeal that his claims were not barred by the applicable statues of limitation.

Plaintiff filed his original pro se complaint on February 27, 1998. That complaint was dismissed and plaintiff was given leave to file an amended complaint which alleged the following. On October 16, 1966, at the age of eight, he was awarded $1.5 million as a result of a personal injury action. On August 17, 1992, he

went to The Northern Trust Company to collect his funds. He met with "Banker Max White and Accountant Eva" and they informed him that they thought he was dead and they had changed the name on is account to their own. Additionally, these employees told him the account was written on the "sletters" in the back room of the trust division, that he would need a passport book to prove his claim. They sent him to Judge Novoselsky, the presiding judge in the probate division.

According to plaintiff, Judge Novoselsky sent him to a "custodian at the law department" where a ledger confirmed he was awarded $1.5 million on October 16,1966 in "Case No. 2196." He was told the file for that case had been destroyed. Plaintiff further alleged that in September 1992 his attorney from the personal injury case told him that the damage award was deposited into a trust account on his behalf at the Northern Trust Bank in October 1966. In 1997, he contacted the former Chairman of the Board of The Northern Trust Company, Byron Smith, at his home. According to plaintiff, Smith told him he was aware of the account and would have someone contact him. Plaintiff claimed that defendant fraudulently refused to give him his trust assets.[1] His allegations were premised on the "Uniform Trustee Accounting Act."

On October 7, 1998, the trial court dismissed the first amended complaint without leave to refile, pursuant to section 2-619 (a) (5) of the code, finding the complaint barred by the applicable statutes of limitation for breach of fiduciary duty and violation of the Trust and Trustees Act. 760 ILCS 5/1 et seq. (West 1996) . Plaintiff appeals pro se from that order contending

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[1] We note that at the court's request, counsel conducted an investigation into the validity of the claims and submitted a written status report to the court. According to the report, plaintiff was involved in an accident for which he received an award of $1,250 in 1967. After fees and expenses, $600 was deposited on plaintiff's behalf at the Franklin Savings & Loan Association. Plaintiff withdrew those funds in 1978. The report also included an affidavit signed by Max White, the alleged bank employee. He acknowledged that he knew plaintiff, but stated that he had been employee of United Airlines since 1986, had never been employed by Northern Trust, and had never met with plaintiff at the bank. Furthermore, the report indicates that none of the plaintiff's allegations were ever substantiated by Mr. Smith, by plaintiff's former attorney in the personal injury action, or by the individual he claims accompanied him to the bank.

that the statute of limitations is not applicable to his claim, but makes no argument to support that contention.

Section 2-619 (a) (5) of the Code permits dismissal of a cause of action which is not commenced within the time allowed by law. A motion to dismiss pursuant to section 2 – 619 admits all well-pleaded facts and reasonable inferences that cam be drawn from those facts. Becker v. Zellner, 292 Ill. App. 3d 116, 122 (1997). Additionally, a section 2-619 motion admits the legal sufficiency of the complaint, but asserts affirmative matter to avoid or defeat the claim. Gragg v. Calandra, 297 Ill. App. 3d 639, 643 (1998). The standard of review governing dismissals pursuant to section 2-619 is de novo. Kedzie & 103rd Currency Exchange, Inc. V. Hodge, 156 Ill. 2d 112, 116 (1993).

It is unclear from the face of the complaint the exact cause of action plaintiff intended to pursue. However, based upon the allegations, the only possible relevant causes of action would be premised on the breach of a fiduciary duty, a violation of the Trusts and Trustees Act, or an action at common law for fraud or an accounting. Based upon the facts alleged, the complaint is barred by the statute of limitations.

Claims for breach of fiduciary duty are subject to a five-year limitations period pursuant to section 13-205 of the Code. 735 ILCS 5/13-205 (West 1996); Armstrong v. Guigler, 174 Ill. 2d 281, 294 (1996) . The Illinois Trusts and Trustee Act (Act) contains a three-year statute of limitations for claims challenging and accounting. 760 ILCS 5/11 (a) (West 1996). The limitations period for an action at common law arising from fraud or for an accounting is also five years. 735 ILCS 5/13-205 (West 1996); Gilbert Bros., Inc. v. Gilbert, 258 Ill . App. 3d 395, 400 (1994).

It is well settled that a cause of action accrues when a person knows or reasonably should know of his injury and also knows or reasonably should know that the injury may have been wrongfully caused. Knox College v. Celotex Corp., 88 Ill. 2d 407, 416 (1981). A person is possessed of such knowledge when they have sufficient information concerning their injury to put a reasonable person on notice to determine whether actionable conduct is involved. Knox College, 88 Ill. 2d at 416. Generally, the determination as to when an injured party knows or reasonably should have known of his injury and that it was

wrongfully caused is a question of fact. However, where it is evident from the undisputed facts that only one conclusion can be drawn, the determination is one of law to be made by the court. Witherell v. Weimer, 85 Ill. 2d 146, 156 (1981). Thus, based upon the applicable statutes of limitation, plaintiff had to file suit within five years of the date he had actual knowledge of sufficient facts to cause him to investigate his claim.

On August 17, 1992, plaintiff was allegedly told by bank employees that the name on his trust account had been changed, and that the bank refused to give him is purported funds. It was on that date that he was possessed of sufficient knowledge of his injury. The information he received on that date caused him to further investigate his claim, by allegedly contacting Judge Novoselsky, attempting to retrieve his court file, and by contacting Mr. Smith. Therefore, under any applicable statute of limitations, plaintiff was required to file his claim no later than August 17, 1997. Because plaintiff did not file his original complaint until February 27, 1998, any claims he potentially asserted, even if true, are time barred.

Accordingly, we affirm the judgement of the circuit court.

Affirmed.

McNULTY, J., with GORDON, P.J. and RAKOWSKI, J., concurring

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

EPNEST MCCLELLAN, JR,. a/k/a VEARNEST McCCLELLAN, JR., Plaintiff –Appellant	)	
v.	)	No. 1-8-4163
THE NORTHERN TRUST COMPANY, Defendant – Appellee	)	

ORDER

Upon consideration of petition for rehearing filed by plaintiff-appellant,

IT IS HEREBY ORDERED that said petition for rehearing is DENIED.

/s/ Jill K. McNulty

Justice Jill K. McNulty

/s/ Joseph Gordon

Presiding Justice Joseph Gordon

/s/ Thomas R. Rakowski

Justice Thomas R. Rakowski

ORDER ENTERED
SEP 03 1999
APPELLATE COURT , FIRST DISTRICT

Appendix B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ERNEST MCCLELLAN, JR., a.k.a. VEARNEST MCCLELLAN,	)	
Plaintiff,	)	
	)	98-L-02461
vs.	)	
	)	Hon. Richard E. Neville
THE NORTHERN TRUST CO.,	)	
Defendant.	)	

ORDER

This matter coming before the Court on the Defendant Northern Trust Company's motion to dismiss Plaintiff Ernest McClellan's First Amended Complaint pursuant to section 2-619(a)(5) of the Code of Civil Procedure, the Court being fully informed of the premises and the parties having notice, it is ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

Defendant originally moved to dismiss the complaint pursuant to section 5/2-615, but subsequently filed a motion for leave to amend their motion to dismiss under section 5/2-619(a)(5). The Court grants that motion. Under the amended motion, defendant moves to dismiss Plaintiff's first amended complaint under 735 ILCS 5/2-619 motion alleges an affirmative matter, such as a statute of limitations, that defeats the claim or the defense. See Van Duyn v. Smith, 173 Ill. App. 3d 523 (3rd Dist. 1988).

In this case, the Court finds that any applicable limitations period began to run on August 17, 1992 when McClellan visited Northern Trust. Plaintiff's claims of breach of fiduciary duty and violation of the Trusts and Trustees Act, 760 ILCS 5/1 et seq. (West 1996, Supp. 1998) were subject to a five-year limitations period. See 735 ILCS 5/13-205 (fiduciary duty); 760 ILCS 5/11 (a), (f) (Trusts and Trustees Act). As such, plaintiff's claims

should have been filed by August 17, 1997. However, plaintiff did not file his original Complaint until February 27, 1998.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED THAT: Northern's motion to dismiss McClellan's First Amended Complaint under 735 ILCS 5/2-619 (a)(5) because the claims barred therein by certain statute of limitations period is granted. Plaintiff is denied leave to replead.

The hearing set for October 8, 1998 is stricken.

Judge Richard E. Neville
OCT 07 1998
Circuit Court - 237

/s/ Richard E Neville

ENTERED:

Honorable Richard E. Neville
Judge of the Circuit Court of Cook County
County Department, Law Division

Appendix C

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
88385 SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

December 1, 1999

Mr. Vearnest McClellan, Jr.
830 E. Old Willow Road
Prospect Heights, IL 60070

No. 88385 - Ernest McClellan, Jr., etc., petitioner, v. The Northern Trust Company, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 23, 1999.

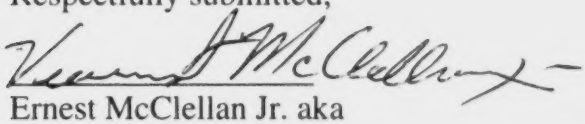
Appendix D

CONCLUSION

The Petitioner is pursuing the Justice System in hope they can assist him attaining his trust account asset for the Respondent (The Northern Trust Co. (Bank).

Wherefore, for all the reason stated herein, Petitioner – Beneficiary Ernest McClellan Jr. respectfully requests that this Court will review the order of the Appellate Court of Illinois , First District that affirmed the judgement of the Circuit Court, The Petitioner Mr. McClellan pray that you'll grant his petition for a writ of certiorari.

Respectfully submitted,



Ernest McClellan Jr. aka
Vearnest McClellan Jr.
Date: 02-28-2000